

**DURHAM, NORTH CAROLINA  
TUESDAY, SEPTEMBER 7, 2021  
7:00 P.M.**

The Durham City Council met in a regular session on the above date and time virtually via Zoom with the following members present: Mayor Steve Schewel, Mayor Pro Tempore Jillian Johnson and Council Members Javiera Caballero, Pierce Freelon, DeDreana Freeman, Mark-Anthony Middleton and Council Member Charlie Reece. Absent: None.

Also Present: City Manager Wanda Page, City Attorney Kim Rehberg, City Clerk Diana Schreiber, and Deputy City Clerk Ashley Wyatt.

Mayor Schewel called the meeting to order and welcomed everyone in attendance.

Mayor Pro Tempore Johnson called for a moment of silent meditation.

**[CEREMONIAL ITEMS]**

Mayor Pro Tempore Johnson read into the record the National Recovery Month Proclamation and presented it Larry McGhill.

**[ANNOUNCEMENTS BY COUNCIL]**

Mayor Schewel announced that City Attorney Kim Rehberg received a pay increase based on her performance evaluation at a new salary of \$206,700.00 and that the City Clerk Diana Schreiber received a pay increase based on her performance evaluation at a new salary of \$103,175.00.

Council Member Middleton highlighted the Hillside High School Alumni Choir for creating a scholarship fund for students.

Council Member Freeman recognized that it was national hurricane preparedness month and expressed concern for states that were recently devastated by Hurricanes.

Council Member Freelon wished Mayor Schewel and the Jewish community a happy Rosh Hashanah.

**[PRIORITY ITEMS]**

City Manager Page advised that items 3 and 8 had additional information added.

City Attorney Rehberg asked for council approval for a budget amendment to allow for the purchasing of legal practice management software for the City Attorney's Office as well as an additional attorney position.

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to approve the City Attorney’s priority item, was approved at 7:13 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None

**[CONSENT AGENDA]**

**SUBJECT: DURHAM CULTURAL ADVISORY BOARD – APPOINTMENT (ITEM 1/ PR #14849)**

**MOTION** by Council Member Middleton, seconded by Council Member Freeman, to appoint Elias J.J. Torre to the Durham Cultural Advisory Board with the term to expire on June 30, 2024, was approved at 7:19 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None

**SUBJECT: INTERLOCAL AGREEMENT WITH DURHAM COUNTY AND ORANGE COUNTY REGARDING COST SHARING FOR TRANSIT PLAN GOVERNANCE STUDY (ITEM 3/ PR #14847)**

**MOTION** by Council Member Middleton, seconded by Council Member Freeman, to resolve that the City Manager be authorized to execute an interlocal agreement with Durham County and Orange County to reimburse the City of Durham for costs incurred for the administration of the Transit Plan Governance Study, was approved at 7:19 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None

**SUBJECT: MASTER SERVICE AGREEMENTS FOR THE 2021-2024 ON-CALL PROFESSIONAL SERVICES FOR WATER, WASTEWATER, AND UTILITY MANAGEMENT (ITEM 4/ PR #14479)**

**MOTION** by Council Member Middleton, seconded by Council Member Freeman, to authorize the City Manager to execute Master Service Agreements for 2021-2024 On-Call Professional Services for Water, Wastewater, and Utility Management with: (1) AECOM Technical Services of North Carolina, Inc., (2) Brown & Caldwell, Inc., (3) CDM Smith, Inc., (4) CJS Conveyance, PLLC, (5) CriTek Engineering Group, P.C., (6) Dewberry Engineers, Inc., (7) Freese & Nichols, Inc., (8) Hazen and Sawyer, P.C., (9) HDR Engineering, Inc. of the Carolinas, (10) Highfill Infrastructure Engineering, P.C., (11) KCI Associates of North Carolina, P.A., (12) Kimley-Horn and Associates, Inc., (13) McKim & Creed, Inc., (14) Raftelis Financial Consultants, Inc., (15) Schnabel Engineering South, P.C., (16) WithersRavenel, Inc., and (17) L.E. Wooten & Company; and to authorize the City Manager to sign Supplemental Service Agreements for services up to \$200,000 for each project without additional City Council approval, was approved at 7:19 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None

**SUBJECT: RESOLUTION AUTHORIZING PARTICIPATION IN THE NORTH CAROLINA INVESTMENT POOL (ITEM 5/ PR #14843)**

**MOTION** by Council Member Middleton, seconded by Council Member Freeman, to adopt a resolution authorizing the City's participation in the North Carolina Investment Pool, was approved at 7:19 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None

**RESOLUTION #10228**

**SUBJECT: INTERGOVERNMENTAL AGREEMENT WITH THE U.S. GEOLOGICAL SURVEY FOR OPERATION AND MAINTENANCE OF THE CITY OF DURHAM RAINFALL AND STREAMFLOW NETWORK (ITEM 6/ PR #14813)**

**MOTION** by Council Member Middleton, seconded by Council Member Freeman, to authorize the City Manager to execute an intergovernmental agreement with the U.S. Geological Survey for the continued operation and maintenance of the automated rainfall and streamflow monitoring network at an amount not to exceed \$218,800 for the period covering October 1, 2021 through September 30, 2023, was approved at 7:19 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None

**[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]**

**SUBJECT: CONSOLIDATED ANNEXATION - 1051 OLIVE BRANCH ROAD (ITEM 8/ PR #14842)**

Danny Cultra, Senior Planner, stated for the record that the Planning Department hearing item had been advertised and noticed in accordance with state and local law, and the affidavit of the notice were on file in the Planning Department and provided the following staff report:

The item came before Council at the June 21, 2021 meeting, at which time they voted for continuance to the September 7<sup>th</sup> meeting to give the applicant an opportunity to address several concerns raised with the proposed request.

The request for voluntary annexation, utility extension agreement, future land use map (FLUM) change, and zoning map change was received from Tim Sivers of Horvath and Associates for 79.478 acres located at 1051 Olive Branch Road.

The site was presently zoned Residential Rural (RR) and Falls/Jordan Lake Watershed Protection Overlay District-B (F/J-B), and was located within the Suburban Development Tier. The applicant was proposing to rezone the property to Planned Development

Residential 3.700 (PDR 3.700) for up to 284 single-family and townhouse residential dwelling units.

The property was currently designated Very Low Density Residential and Recreation and Open Space on the Future Land Use Map. The proposed PDR 3.700 zoning was inconsistent with the designated Future Land Use, but if the proposed zoning was approved, the FLUM was to be re-designated to Low Density Residential to ensure a consistency with the zoning. All referenced approvals would become effective as of September 30, 2021.

The Planning Commission, by a vote of 1-11 at their April 13, 2021 meeting, recommended denial of this request.

The applicant met with Planning staff to address concerns that had been raised. They had an archaeological survey conducted by an experienced archaeologist concerning an existing referenced grave site, updated the development plan to commit to increasing the tree coverage to 24%, demonstrated the distribution of tree coverage across the site, eliminated three vehicular stream crossings (one on the southern portion of the site, one access point and crossing on the northwestern buffer, and on the northeastern buffer which was achieved by shifting the main connector road slightly to the south), committed to increasing percentage of open space to 35%, and condensed the building and parking envelope on the development plan to create cluster development away from stream buffers in order to meet the intent of the East Durham Open Space Plan. These modifications and the changes were highlighted in the updated development plan.

There were three motions required for the application. The first was to adopt an ordinance annexing '1051 Olive Branch' into the City of Durham, and enter into a Utility Extension Agreement with Pulte Home Company, LLC; The second is: To adopt an ordinance for the rezoning and amend the future land use map; and the third is: To adopt a Consistency Statement.

The public hearing was continued from the June 21, 2021 Council Meeting.

LeDeidre Mathews, a representative for the applicant gave a presentation to council and spoke to the following about the project: mass grading, tree preservation, tree coverage, increase in open space, and an archeological survey that had been conducted.

Timothy Hill, a resident of Durham spoke to the need to protect water shed areas and expressed concerns for future water quality and traffic in the area.

Seeing no additional speakers, Mayor Pro Tempore Johnson declared the public hearing closed.

Mayor Schewel commended staff for their improvements to the staff reports, specifically about how they now take into account other developments in the area and how they impact traffic. He also asked a question based on an email from a resident regarding if the proposal conflicted with the City's open space plan.

Mr. Cultra responded that staff believed the project was in line with open space plan.

Mayor Schewel asked how the plan comported with the Future Land Use Map.

Sarah Young, Director of the City-County Planning Department stated that current recommendations regarding the map were subject to change.

Mayor Schewel asked about the intersections related to the project having failing levels of service.

Bill Judge, Assistant Director of Transportation advised that it was not uncommon for an unsignalized intersection to have a failing level and that usually it was due to a side street.

Council Member Middleton asked for clarification on certain terms in the archeological survey.

Ms. Matthews advised that no evidence was found to designate the area as a historical site.

Mayor Schewel expressed his support for the item and noted that the applicant made significant changes since the item was heard previously and that concerns from both Council and the Planning Commission were addressed.

Council Member Middleton echoed the comments made by Mayor Schewel, expressed his support for the item and expressed that comments made by the Planning Commission was trending toward being aspirational.

Council Member Freeman expressed that she would not be supporting an annexation in that area, but recognized the work done by staff and the applicant on the project.

Council Member Caballero expressed her support for the item, however she stated that she would have preferred for the applicant to have presented the item as it was in June.

Council Member Reece thanked the staff and the applicant for their work on the item and recognized that it had improved; however, he stated that he would not be supporting it. He also echoed the comments of his council colleague regarding presenting a better proposal initially because once significant changes have been made, the council sees a vastly different project than the planning commission.

Council Member Freelon thanked everyone for the open dialogue and also reiterated the need for the developers to present thoughtful projects that adhered to the values of the city of Durham initially.

Mayor Pro Tempore Johnson expressed her support for the item and thanked the applicant for addressing the concerns they stated at the previous meeting.

Council Member Middleton stated that ultimately the City Council was responsible for being the firewall between the city a profit driven capitalists and that the Planning Commissions advice was impactful, but not determinative.

Council Member Freeman noted that the Council needed to push developers to build in areas where residents could live near transportation or walk.

**MOTION** by Council Member Middleton, seconded by Council Member Caballero, to adopt an ordinance annexing '1051 Olive Branch Road' into the City of Durham effective September 30, 2021; and to authorize the City Manager to enter into a utility extension agreement with Pulte Home Company, LLC, was approved at 8:17 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, and Middleton. Noes: Council Members Freeman and Reece. Absent: None

**ORDINANCE #15867**

**MOTION** by Council Member Middleton, seconded by Council Member Freelon, to adopt an ordinance amending the Unified Development Ordinance by taking property out of Residential Rural (RR), Falls/Jordan Lake Watershed Protection District-B (F/J-B) and establishing the same as Planned Development Residential 3.700 (PDR 3.700), Falls/Jordan Lake Watershed Protection District-B (F/J-B), was approved at 8:18 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, and Middleton. Noes: Council Members Freeman and Reece. Absent: None

**ORDINANCE #15868**

**MOTION** by Council Member Reece, seconded by Council Member Middleton, to adopt a Consistency Statement as required by NCGS 160D-605, was approved at 8:20 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None

UNIFIED DEVELOPMENT ORDINANCE  
ZONING MAP CHANGE CONSISTENCY STATEMENT  
BY THE DURHAM CITY COUNCIL  
REGARDING Z2000028, 1051 Olive Branch Road

WHEREAS the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160D-605, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

WHEREAS the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160D-605, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:

That final action regarding zoning map change Z2000028, 1051 Olive Branch Road, is based upon review of consistency with the Durham Comprehensive Plan and any other officially adopted plan that is applicable, as provided in the 'Consistency with Adopted Plans' and 'Reasonable and in the Public Interest' sections of the staff report and Attachment 13, 'Comprehensive Plan Consistency Analysis'; regarding the subject '1051 Olive Branch Road, Z2000028' along with additional agenda information provided to the City Council and information provided at the public hearing; and

Although the proposed zoning map change designation is inconsistent with the Future Land Use designation as provided on the Future Land Use Map (FLUM) of the Comprehensive Plan in Attachment 5, the zoning change will amend the FLUM to a designation consistent with the proposed zoning change and other land use designations in the vicinity of the subject area.

It is the objective of the Durham City Council to have the Unified Development Ordinance promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. This request promotes this by offering fair and reasonable development regulations supported by the 'Consistency with Adopted Plans' and 'Reasonable and in the Public Interest' sections of the staff report, Attachment 13, 'Comprehensive Plan Consistency Analysis'; regarding the subject '1051 Olive Branch Road, Z2000028' along with additional agenda information provided to the City Council and information provided at the public hearing. Therefore, the request is reasonable and in the public interest.

**[ADJOURNMENT- 8:20 PM]**

Ashley Wyatt, CMC  
Deputy City Clerk

Diana Schreiber, CMC  
City Clerk

